IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.3163 of 1993

DATE OF ORDER:

Atam Parkash and another

...Petitioner(s)

Versus

State of Haryana and Others

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. R.K. Malik, Advocate.

Mr. Jitender Chauhan, Addl.A.G, Haryana.

M.M. AGGARWAL,J

Petitioners and respondents No.3 to 7 were working in the Family Welfare Wing of Health Department of Haryana State. Petitioner No.1 is stated to have jointed service in September 1963 and was promoted as Family Welfare Extension Educator on 17.10.1970 on ad hoc basis whereas petitioner No.2 had joined service on 24.11.1955 and was promoted as Family Welfare Extension Educator on 1.8.1968 on ad hoc basis. Both the petitioners were regularized on the post on 16.10.1992. However, respondents No.3 to 7, who were juniors, were also working as Family Welfare Extension Educator. They were promoted as District Family Welfare Education Officers on 10.1.1990 and petitioners claim that they were seniors but still they were not considered for promotions.

This writ petition is for quashing promotions of respondents No.3 to 7 being juniors and then for promotions of the petitioners on the post of District Family Welfare Education Officers.

During the course of arguments, it came out that Inderjit Singh petitioner was senior most whereas respondent No.4 Karan Singh Khasa was next and the petitioner Atam Parkash was further next down and respondents No.3, 5 to 7 were thereafter down inter se as far as petitioners

and respondents No.3 to 7 are concerned.

On behalf of the State, reply had been filed in which it was pleaded that since petitioners were not graduates, therefore they were not promoted. It was pleaded that there were some draft rules prepared awaiting the approval of the State Government and the eligibility for the post of District Family Welfare Education Officers was Graduation having five years experience as Family Welfare Extension Educator. It was also pleaded that there were 18 Family Welfare Extension Educators, who were seniors to the petitioners but they being Marticulate only, were not eligible to the post of District Family Welfare Education Officers and therefore were not promoted.

This written statement is dated 9.7.1993. In the written statement, it was further stated that the draft rules were yet to be approved by Council of Ministers and were to be notified. Still, it is not clear as to whether rules have been notified and have come into force and from which date.

Promotions of respondents No.3 to 7 had been effected on 10.1.1990. Written statement is dated 9.7.1993. It will show that rules had not come into force even when more than three years from the promotions of respondents No.3 yo 7 had elapsed. It is clear that on the date of promotion of respondents No.3 to 7, there were no rules prescribing that for the post of District Family Welfare Education Officers, one must be Graduate and should have five years service as Family Welfare Extension Educator.

On behalf of the respondent-State, a judgment of this Court reported in Jagrup Singh v. State of Haryana, 1996(3) SCT 455 was relied and it was argued that even if draft rules before coming into force may not have statutory force but till then if the appointing authority decides to regulate the service conditions under such rules, the action taken will be just and fair and it will not be said to be violative of any law.

Counsel for the petitioner had relied on a judgment of Hon'ble Supreme Court reported in Vimal Kumari v. State of Haryana and Others, 1998(2) SLR, 230 that recourse to such draft rules is permissible only for meeting an emergent situation. These should not be applied retrospective. Counsel for the petitioner had relied another judgment of Hon'ble Supreme

Court reported in High Court of Gujarat and Another v. Gujarat Kishan Mazdoor Panchayat and Others, 2003(2) SCT 370 and argued that draft rules can be acted upon only if there was clear intention on the part of the Government to enforce the same in near future. It was argued that although respondents No.3 to 7 were promoted on 10.1.1990 but it is not shown as to whether on that date, there were any draft rule prepared. It was argued that even after more than three years of the promotions, reply of the State shows that these had not been approved or notified and therefore promotions of respondents No.3 to 7 can not stand.

It has come out that all the petitioners and respondents have since retired from service. Promotions were to be on the basis of seniority on the post of Family Welfare Extension Educator.

This petition is allowed to the extent that let promotions to the post of District Family Welfare Education Officers be made as per seniority on the post of Family Welfare Extension Educator irrespective of the fact whether any person was graduate or completed five years or not.

March 16,2007 (M.M. AGGARWAL)
manoj JUDGE